

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RACHEL MENDOZA GARCIA,
Individually, and on Behalf of All
Wrongful Death Beneficiaries of ISAAC
JOSEPH DURAN, Deceased,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

Case No. 1:24-cv-01128-KES-BAM

FINDINGS AND RECOMMENDATIONS
REGARDING DEFENDANTS' MOTION TO
DISMISS THE COMPLAINT FOR FAILURE
TO STATE A CLAIM UPON WHICH RELIEF
MAY BE GRANTED

(Doc. 5)

Findings and Recommendations

I. Introduction

This action arises from the death of Isaac Joseph Duran ("Decedent") while he was an inmate at Kern Valley State Prison ("KVSP"). Plaintiff Rachel Mendoza Garcia, Decedent's mother, initiated this action both individually and on behalf of all wrongful death beneficiaries against Defendants California Department of Corrections and Rehabilitation ("CDCR"), KVSP Warden Christian Pfeiffer, former CDCR Secretary Kathleen Allison, and CDCR Secretary Jeff Macomber (collectively "Defendants").

Defendants move to dismiss the complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(7). (Doc. 5.) Plaintiffs opposed the motion on November 12, 2024. (Doc. 9)

1 Defendants replied on November 18, 2024. (Doc. 10.) The motion was referred to the
2 undersigned for the preparation of findings and recommendations and/or other appropriate action.
3 (Doc. 6.) The Court found the motion suitable for resolution without oral argument pursuant to
4 Local Rule 230(g) and vacated the hearing set for December 6, 2024. (Doc. 11.)

5 Having considered the parties' briefs, and for the reasons set forth below, the Court will
6 recommend that Defendants' motion to dismiss be granted in part and denied in part.

7 **II. Summary of Plaintiff's Complaint**

8 Common Allegations

9 On October 14, 2023, at approximately 2:55 p.m., while incarcerated at KVSP, Decedent
10 was attacked by two other inmates, Roland C. Corona and Luis Alvidrez, who used inmate-
11 manufactured weapons. Decedent sustained multiple stab wounds and was transported to an
12 outside medical facility for a higher level of care. On November 9, 2023, at approximately 9:14
13 p.m., Decedent was pronounced deceased while under the care of medical staff at Kern Medical
14 Center-Bakersfield. (Doc. 1-1, Complaint ¶ 21.)

15 Prior to his death, Decedent had bipolar disorder with schizophrenic tendencies. Due to
16 his mental disability, Decedent was often medicated and was supposed to be housed in a
17 segregation unit. Decedent was not supposed to be permitted, and should not have been
18 permitted, to be with or around the general population of the prison due to his mental disability.
19 However, on October 14, 2023, CDCR correctional officers permitted Decedent to enter a
20 restricted area (i.e., the yard), which resulted in Decedent being stabbed approximately 17 times.
21 (Compl. ¶ 22.)

22 Plaintiffs assert CDCR's correctional officers knew and/or had reason to know that
23 Decedent was not permitted to enter the yard with the general population due to his mental
24 disability. Plaintiffs allege that (1) defendants were deliberately indifferent to Decedent's serious
25 and immediate mental and physical health needs, mental illness, and physical pain; (2) defendants
26 failed to properly monitor Decedent to ensure that he was not allowed access to the general
27 population areas within KVSP; and (3) defendants failed to timely step in and aid Decedent,
28 allowing him to be stabbed multiple times. (Compl. ¶ 23.)

1 Claims for Relief

2 Plaintiffs forward the following claims for relief: (1) failure to protect from harm in
3 violation of the Fourteenth Amendment against all defendants; (2) failure to provide medical care
4 in violation of the Fourteenth Amendment against all defendants; (3) deprivation of the right to
5 familial relationship with Decedent in violation of the Fourteenth Amendment against all
6 defendants; (4) supervisory liability - failure to properly train, supervise and discipline against
7 Defendants Pfeiffer, Allison, and Macomber; (5) negligence – wrongful death against all
8 defendants; (6) right to be free from cruel and punishment in violation of the Eighth Amendment
9 against all defendants; (7) violation of the Americans with Disabilities Act (“ADA”) and
10 Rehabilitation Act (“RA”) against Defendants Allison, Macomber, Pfeiffer, and DOES 1 through
11 50; (8) violation of California Civil Code § 52.1 (Tom Bane Act) against all defendants; (9)
12 violation of California Government Code § 845.6 against all defendants; and (10) a survival
13 action pursuant to California Code of Civil Procedure § 377.30 against all defendants.

14 **III. Defendants’ Motion to Dismiss**

15 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a claim, and
16 dismissal is proper if there is a lack of a cognizable legal theory or the absence of sufficient facts
17 alleged under a cognizable legal theory. *Conservation Force v. Salazar*, 646 F.3d 1240, 1241–42
18 (9th Cir. 2011) (quotation marks and citations omitted). A court may only consider the
19 complaint, any exhibits thereto, and matters which may be judicially noticed pursuant to Federal
20 Rule of Evidence 201. *See Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988);
21 *Isuzu Motors Ltd. v. Consumers Union of U.S., Inc.*, 12 F. Supp. 2d 1035, 1042 (C.D. Cal. 1998).

22 To survive a motion to dismiss, a complaint must contain sufficient factual matter,
23 accepted as true, to state a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678
24 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)) (quotation marks
25 omitted); *Conservation Force*, 646 F.3d at 1242; *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969
26 (9th Cir. 2009). “A claim has facial plausibility when the plaintiff pleads factual content that
27 allows the court to draw the reasonable inference that the defendant is liable for the misconduct
28 alleged.” *Iqbal*, 556 U.S. at 678. While the plausibility requirement is not akin to a probability

1 requirement, it demands more than “a sheer possibility that a defendant has acted unlawfully.” *Id.*
 2 This plausibility inquiry is “a context-specific task that requires the reviewing court to draw on its
 3 judicial experience and common sense.” *Id.* at 679.

4 In considering a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6),
 5 the court must accept as true the allegations of the complaint in question, *Erickson v. Pardus*, 551
 6 U.S. 89, 94 (2007), and construe the pleading in the light most favorable to the plaintiff. *Jenkins*
 7 *v. McKeithen*, 395 U.S. 411, 421 (1969); *Meek v. County of Riverside*, 183 F.3d 962, 965 (9th Cir.
 8 1999). However, the court need not credit “labels and conclusions” or “a formulaic recitation of
 9 the elements of a cause of action.” *See Twombly*, 550 U.S. at 555.

10 If a complaint fails to state a plausible claim, “[a] district court should grant leave to
 11 amend even if no request to amend the pleading was made, unless it determines that the pleading
 12 could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122,
 13 1130 (9th Cir. 2000) (en banc) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)).

14 **IV. Discussion and Analysis**

15 Defendants seek dismissal on the grounds that: (1) Plaintiffs fail to allege standing to
 16 bring a claim on behalf of all wrongful death beneficiaries; (2) Plaintiffs fail to join all wrongful
 17 death beneficiaries; (3) Plaintiffs fail to allege a failure-to-protect claim; (4) Plaintiffs fail to
 18 allege a denial of medical care claim or a claim that defendants violated Decedent’s right to be
 19 free from cruel and unusual punishment; (6) Plaintiffs fail to allege a loss of familial relations
 20 claims; (7) Plaintiffs fail to allege a claim for failure to properly train, supervise, and discipline
 21 against Defendants Pfeiffer, Allison, and Macomber; (8) Plaintiffs fail to state a negligence-
 22 wrongful death claim; (9) Plaintiffs’ cause of action for violations of the ADA and Rehabilitation
 23 Act should be dismissed because it is impermissibly brought against Defendants Macomber,
 24 Allison, and Pfeiffer in their individual capacities, and it fails to state a claim; (10) statutory
 25 immunities bar Plaintiffs’ state law causes of action; (11) the § 1983 claims against CDCR should
 26 be dismissed; (12) Plaintiffs’ cause of action for violation of Government Code § 845.6 fails to
 27 state a claim; (13) certain of Plaintiffs’ claims for punitive damages and attorneys’ fees are
 28 unavailable; and (14) Defendant Allison should be dismissed as she retired on December 2022,

1 months before Decedent was attacked on the yard. (Doc. 5.)

2 **A. Standing**

3 The parties agree that Plaintiff Mendoza Garcia, individually, has standing to bring a
 4 wrongful death claim in this case. (*See* Doc. 5 at 12-13 (“Because it does not appear that
 5 Decedent had children, based on the allegations in the complaint Plaintiff Mendoza Garcia has
 6 standing to bring wrongful-death claim in this case.”); Doc. 9 at 9-10.) Defendants argue,
 7 however, that the complaint does not detail how Plaintiff Mendoza Garcia has standing to bring
 8 claims “on behalf of all wrongful death beneficiaries” under California Code of Civil Procedure
 9 377.60. (Doc. 5 at 12.)

10 “Standing to bring a wrongful death claim is governed by California Code of Civil
 11 Procedure Section 377.60, and the category of persons eligible to bring wrongful death actions
 12 are strictly construed.” *Nash-Perry v. City of Bakersfield*, No. 1:18-cv-01512 JLT, 2021 WL
 13 3883681, at *11 (E.D. Cal. Aug 31, 2021) (internal quotation and citation omitted). Section
 14 377.60, in relevant part, provides:

15 A cause of action for the death of a person caused by the wrongful act or neglect
 16 of another may be asserted by any of the following persons or by the decedent’s
 personal representative on their behalf:

17 (a) The decedent’s surviving spouse, domestic partner, children, and issue of
 18 deceased children, or if there is no surviving issue of the decedent, the
 19 persons, including the surviving spouse or domestic partner, who would be
 20 entitled to the property of the decedent by intestate succession. If the parents
 would be entitled to bring an action under this subdivision, and the parents are
 deceased, then the legal guardians of the decedent, if any, may bring an action
 under this subdivision as if they were the decedent’s parents.

21 (b) (1) Whether or not qualified under subdivision (a), if they were dependent on
 22 the decedent, the putative spouse, children of the putative spouse,
 23 stepchildren, parents, or the legal guardians of the decedent if the parents are
 deceased.

24 . . .

25 (c) A minor, whether or not qualified under subdivision (a) or (b), if, at the time
 26 of the decedent’s death, the minor resided for the previous 180 days in the
 decedent’s household and was dependent on the decedent for one-half or more
 of the minor’s support.

27 Cal. Code. Civ. Proc. 377.60(a)-(c).

28 A decedent’s parents become heirs under the wrongful death statute when there is no

1 surviving issue. *See* Cal. Prob. Code § 6402(b); *Chavez v. Carpenter*, 91 Cal. App. 4th 1433,
2 1440 (2001) (“Under the laws of intestate succession, a decedent’s parents become heirs where
3 there is no surviving issue.”). Parents also “may sue for the wrongful death of their child if they
4 were dependent on the decedent.” *Id.* at 1445 (quoting Cal. Code Civ. Proc. § 377.60(d)); *see*
5 *also Nash-Perry*, 2021 WL 3883681, at *11. Thus, a parent may assert a wrongful death claim if
6 there are no children or issue or if the parent is dependent on the decedent. *Id.* (citation omitted).

7 As indicated, there is no dispute that Plaintiff Mendoza Garcia has standing to bring a
8 wrongful death claim in this action. Further, in response to Defendants’ motion, Plaintiff
9 Mendoza Garcia contends that she is “Decedent’s sole wrongful death beneficiary,” (Doc. 9 at
10 10). Defendants do not address this contention or meaningfully dispute that Plaintiff Mendoza
11 Garcia is the sole wrongful death beneficiary. (Doc. 10 at 6.) Defendants merely speculate that
12 “it is possible that another person could have the same right as Plaintiff Mendoza Garcia to
13 commence the action or sue as a successor-in-interest of Decedent in the action.” (*Id.*) Based on
14 Plaintiff Mendoza Garcia’s representation that she is Decedent’s sole wrongful death beneficiary,
15 she appears to be the *only* person with standing to bring a wrongful death claim in this case.

16 To extent the complaint’s allegations suggest that Plaintiff Mendoza Garcia is attempting
17 to bring a wrongful death action on behalf of any wrongful death beneficiary *other than herself*,
18 she is unable to do so. The Court therefore will recommend that Defendants’ motion to dismiss
19 based on Plaintiff Mendoza Garcia’s lack of standing to bring claims “on behalf of all wrongful
20 death beneficiaries” be granted. The Court also will recommend that Plaintiffs be granted leave
21 to amend to remove any assertion or allegation that Plaintiff Mendoza Garcia brings this action
22 “on behalf of all wrongful death beneficiaries of Isaac Joseph Duran,” and to clarify her standing
23 as the sole wrongful death beneficiary.

24 **B. Joinder**

25 Defendants argue the reference in the complaint to unnamed wrongful death beneficiaries
26 presents an indispensable-party issue under Federal Rule of Civil Procedure 12(b)(7), and the
27 failure to join an indispensable party under Federal Rule of Civil Procedure 19 is a basis for
28 dismissal. (Doc. 5 at 13.)

1 Rule 12(b)(7) authorizes the Court to dismiss an action if a plaintiff has failed “to join a
 2 party under Rule 19.” *Solares v. Diaz*, No. 1:20-cv-00323 JLT BAM, 2023 WL 3724814, at *4
 3 (E.D. Cal. May 30, 2023). Rule 19 provides that a person “must be joined as a party” if:

- 4 (A) in that person’s absence, the court cannot accord complete relief among
 5 existing parties; or
- 6 (B) that person claims an interest relating to the subject of the action and is so
 7 situated that disposing of the action in the person’s absence may:
 - 8 (i) as a practical matter impair or impede the person’s ability to protect
 9 the interest; or
 - 10 (ii) leave an existing party subject to a substantial risk of incurring
 double, multiple, or otherwise inconsistent obligations because of the
 interest.

11 Fed. R. Civ. P. 19(a). If the required person cannot be joined, then “the court must determine
 12 whether, in equity and good conscience, the action should proceed among the existing parties or
 13 should be dismissed.” Fed. R. Civ. P. 19(b).

14 Plaintiff Mendoza Garcia has represented that she is Decedent’s sole wrongful death
 15 beneficiary. Thus, with the exception of Plaintiff Mendoza Garcia, there are no other apparent
 16 wrongful death beneficiaries to be named or joined in this action. Further, leave to amend will be
 17 granted for Plaintiff Mendoza Garcia to clarify her standing as the sole wrongful death
 18 beneficiary. The Court will therefore recommend that Defendants’ motion to dismiss under Rule
 19 12(b)(7) be denied as moot.

20 **C. Failure to Protect and Failure to Provide Medical Care**

21 Defendants argue that Plaintiffs fail to allege an Eighth Amendment claim for failure to
 22 protect, (Doc. 5 at 14-16), and fail to allege an Eighth Amendment claim for failure to provide
 23 medical care, (*id.* at 16-17.) Plaintiffs counter that they have stated an Eighth Amendment cause
 24 of action for failure to protect in the first cause of action, (Doc. 9 at 12), and sufficiently plead an
 25 Eighth Amendment failure to provide medical care claim in the second cause of action, (*id.* at 16-
 26 18).

27 The Court finds that Plaintiffs’ first two causes of action fail to adequately allege Eighth
 28 Amendment claims for failure to protect and failure to provide medical care. Plaintiffs’ first two

causes of action are premised on a violation of the Fourteenth Amendment, not the Eighth Amendment.¹ (See Compl. at 7:24 and ¶ 35; 10:11 and ¶¶ 41, 43.) In the context of a failure to protect claim and a failure to provide medical care claim, the Fourteenth Amendment applies to pretrial detainees, not convicted prisoners. See *Johnson v. Allan*, No. 2:24-cv-00861-JDP (PC), 2024 WL 3471216, at *1 (E.D. Cal. July 18, 2024), report and recommendation adopted, No. 2:24-CV-00861-DJC-JDP (PC), 2024 WL 4495444 (E.D. Cal. Oct. 15, 2024) (explaining that failure to protect and inadequate medical care claims under Fourteenth Amendment apply only to pretrial detainees, and not convicted prisoners); see also *Sandoval v. County of San Diego*, 985 F.3d 657, 667 (9th Cir. 2021) (explaining that for inmates serving custodial sentences following a criminal conviction, the right to adequate medical treatment is part of the Eighth Amendment’s guarantee against cruel and unusual punishment; however the right to adequate medical treatment for pretrial detainees not yet convicted of crime arise under the Fourteenth Amendment’s Due Process Clause); *Castro v. County of Los Angeles*, 833 F.3d 1060, 1067-68 (9th Cir. 2016) (“Inmates who sue prison officials for injuries suffered while in custody may do so under the Eighth Amendment’s Cruel and Unusual Punishment Clause or, if not yet convicted, under the Fourteenth Amendment’s Due Process Clause.”). There are no allegations in the complaint to suggest that Decedent, who was incarcerated at Kern Valley State Prison, was a pretrial detainee. (See Compl. ¶¶ 1, 10.) Plaintiffs therefore cannot maintain claims for failure to protect and failure to provide medical care under the Fourteenth Amendment. Accordingly, the Court will recommend that Defendants’ motion to dismiss the first and second causes action, to the extent they are brought under the Fourteenth Amendment, be granted. The Court also will recommend

¹ Plaintiffs’ second cause of action also alleges a violation of Decedent’s right to be free from deliberate indifference to serious medical and mental health needs as “protected by the Fourth and Fourteenth Amendments” and “guaranteed by the Fourth and/or Fourteenth Amendments.” (Compl. ¶ 41.) However, any claim for failure to provide medical care arises under the Eighth Amendment, not the Fourth Amendment. *Sandoval v. County of San Diego*, 985 F.3d 657, 667 (9th Cir. 2021) (“For inmates serving custodial sentences following a criminal conviction, [the right to adequate medical treatment] is part of the Eighth Amendment’s guarantee against cruel and unusual punishment.”). Although Defendants suggest that reference to the Fourth Amendment should be a reference to the Eighth Amendment (Doc. 5 at 16 n. 2), the Court does not so find as Plaintiff’s complaint includes a sixth cause of action alleging failure to provide medical care arising under the Eighth Amendment. (See Compl. at 18;15-17 and ¶ 77.)

1 denying leave to amend Plaintiffs' Fourteenth Amendment claims for failure to protect or failure
2 to provide medical care as Plaintiffs appear incapable of alleging that Decedent was a pretrial
3 detainee at the time of the events alleged in the complaint.

4 Plaintiffs also forward a sixth cause of action arising under the Eighth Amendment.
5 (Compl. ¶¶ 76-88.) Plaintiffs allege their sixth cause of action sufficiently pleads failure to
6 provide medical care under the Eighth Amendment. (Doc. 9 at 16-19.)

7 A prisoner's claim of inadequate medical care constitutes cruel and unusual punishment in
8 violation of the Eighth Amendment where the mistreatment rises to the level of "deliberate
9 indifference to serious medical needs." *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006)
10 (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). The two-part test for deliberate
11 indifference requires Plaintiffs to show (1) "a 'serious medical need' by demonstrating that failure
12 to treat a prisoner's condition could result in further significant injury or the 'unnecessary and
13 wanton infliction of pain,'" and (2) "the defendant's response to the need was deliberately
14 indifferent." *Jett*, 439 F.3d at 1096.

15 A defendant does not act in a deliberately indifferent manner unless the defendant "knows
16 of and disregards an excessive risk to inmate health or safety." *Farmer v. Brennan*, 511 U.S. 825,
17 837 (1994). "Deliberate indifference is a high legal standard," *Toguchi v. Chung*, 391 F.3d 1051,
18 1060 (9th Cir. 2004), and is shown where there was "a purposeful act or failure to respond to a
19 prisoner's pain or possible medical need" and the indifference caused harm, *Jett*, 439 F.3d at
20 1096. In applying this standard, the Ninth Circuit has held that before it can be said that a
21 prisoner's civil rights have been abridged, "the indifference to his medical needs must be
22 substantial. Mere 'indifference,' 'negligence,' or 'medical malpractice' will not support this
23 cause of action." *Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir. 1980) (citing *Estelle*,
24 429 U.S. at 105-06). Even gross negligence is insufficient to establish deliberate indifference to
25 serious medical needs. *See Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990).

26 In the sixth cause of action, Plaintiffs generally allege that Defendants "deprived
27 DECEDENT of the right to be free from cruel and unusual punishment which was ongoing and
28 led to DECEDENT's death, as secured by the Eighth Amendment ... by subjecting him, or

1 through their deliberate indifference, allowing others to subject him, to delay and denial of access
2 to medical or mental health care for a serious, but treatable, medical or mental health condition . .
3 . .” (Compl. ¶ 77.) Plaintiffs additionally allege Defendants “knew or must have known that
4 DECEDENT’s medical condition and medical, including psychiatric, needs were serious, but
5 treatable, and knew or must have known that he required access and delivery to urgently needed
6 medical/mental health care....” (*Id.* ¶ 78.) Plaintiffs further allege that as a result of Defendants’
7 “deliberate indifference to both DECEDENT’s need for medical care and treatment and his
8 mental condition, and as a result of Defendants’ reckless disregard for DECEDENT’s physical
9 safety and well-being, Plaintiffs suffered damages and deprivation of constitutional rights.” (*Id.* ¶
10 80.) Plaintiffs claim that Defendants deprived Plaintiffs and Decedent of the “right to be free
11 from deliberate indifference to DECEDENT’s serious medical needs while in custody and
12 confined in prison as an inmate, as secured by the Eighth and Fourteenth Amendments.” (*Id.* ¶
13 81.a.)

14 Plaintiffs’ allegations are not sufficient to state a cognizable claim for deliberate
15 indifference to serious medical needs in violation of the Eighth Amendment. First, Plaintiffs’
16 allegations are conclusory, lacking facts identifying a specific medical need. Second, and
17 critically, Plaintiffs do not adequately allege that Defendants knew of and disregarded an
18 excessive risk to Decedent’s medical condition or mental health. “If a prison official should have
19 been aware of the risk, but was not, then the official has not violated the Eighth Amendment, no
20 matter how severe the risk.” *Toguchi*, 391 F.3d at 1057 (citing *Gibson v. County of Washoe,*
21 *Nevada*, 290 F.3d 1175, 1187 (9th Cir. 2002)) (internal quotations omitted); *Farmer*, 511 U.S. at
22 839 (reasoning that deliberate indifference analysis must focus on “what a defendant’s mental
23 attitude actually was”). Plaintiffs allege that Defendants knew or must have known that
24 Decedent’s medical condition and medical needs were serious, and knew or must have known
25 that Decedent required access and delivery of medical/mental health care. However, grouping all
26 Defendants together does not adequately allege what each individual knew. A “prisoner must set
27 forth specific facts as to each individual defendant’s deliberate indifference.” *Leer v. Murphy*, 844
28 F.2d 628, 634 (9th Cir. 1988) (emphasis added). The allegations in the sixth cause of action are

1 conclusory without a factual basis.

2 To the extent Plaintiffs' Eighth Amendment claim for failure to provide medical care is
3 premised on the October 14, 2023 incident on the prison yard, the complaint also fails to state a
4 cognizable claim. Deliberate indifference may be shown when prison officials deny, delay, or
5 intentionally interfere with medical treatment, or may be shown by the way in which prison
6 officials provide medical care. *Jett*, 439 F.3d 1096; *see also Hutchinson v. United States*, 838
7 F.2d 390, 394 (9th Cir. 1988). In this instance, the complaint lacks factual allegations
8 demonstrating that prison officials failed to provide medical care or were deliberately indifferent
9 to a serious medical need on October 14, 2023. Plaintiffs allege only that Decedent was attacked
10 by two other inmates, "sustained multiple stab wounds and was transported to an outside medical
11 facility for higher level of care." (Comp. ¶ 21.) Plaintiffs do not allege a denial, delay, or
12 interference with medical care on October 14, 2023, nor do they include any factual allegations
13 concerning the medical care provided to Decedent prior to his transport to an outside medical
14 facility.

15 Defendants additionally argue that Plaintiffs' sixth cause of action fails to allege any facts
16 to state a claim for violation of the Eighth Amendment. (Doc. 5 at 17.) In particular, Defendants
17 contend that the allegations "are phrased in a conclusory manner without any detail as to what
18 Defendants did to deprive decedent of his right to be free from cruel and unusual punishment."
19 (*Id.*) The Court agrees. Although Plaintiffs argue that they have pled sufficient facts
20 demonstrating deliberate indifference to Plaintiffs' safety when he was allowed to enter the yard
21 and interact with the general population, Plaintiffs' allegations are alleged in a conclusory
22 manner.

23 For these reasons, the Court will recommend that Defendants' motion to dismiss the sixth
24 cause of action for violation of the Eighth Amendment be granted with leave to amend.

25 **D. Loss of familial relations under the Fourteenth Amendment**

26 Plaintiffs assert a claim for deprivation of the right to a familial relationship with
27 Decedent against Defendants CDCR, Pfeiffer, Allison, Macomber, and DOES 1 -50. (Compl. ¶¶
28 49-59.) Plaintiffs allege that these defendants were "deliberately indifferent to DECEDENT's

1 protection, safety, and serious medical and mental health needs, ... and their failure to train,
2 supervise, and/or take other appropriate measures to prevent the acts and/or omissions that caused
3 the untimely and wrongful death of DECEDENT deprived Plaintiff GARCIA of her liberty
4 interest in the parent-child relationship.” (Compl. ¶ 49.) Plaintiffs further allege that “the
5 training policies of the CDCR ... were inadequate to train its officers . . . to handle the usual and
6 recurring situations with which they must deal with, including but not limited to encounters with
7 individual who are violently and/or gravely attacked by others who are incarcerated” and that
8 Defendants “knew that their failure to adequately train CDCR officers, medical and mental health
9 staff, including other agents and employees, to ensure that those in general population are not
10 allowed the opportunity to obtain access to person incarcerated required to be segregated made it
11 highly predictable that its custody, medical and mental health staff would engage in conduct that
12 would deprive persons such as DECEDENT, and thus Plaintiff GARCIA, her rights.” (*Id.* ¶ 52.)
13 Plaintiffs assert that Defendants “were thus deliberately indifferent to the obvious consequences
14 of their failure to train their deputies, agents and employees adequately.” (*Id.*)

15 The Ninth Circuit has recognized that parents have a constitutionally protected liberty
16 interest in the companionship and society of their children. *Wheeler v. City of Santa Clara*, 894
17 F.3d 1046, 1057 (9th Cir. 2018); *Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1106 (9th Cir.
18 2014); *Porter v. Osborn*, 546 F.3d at 1131, 1136 (9th Cir. 2008). “Parents and children may assert
19 Fourteenth Amendment substantive due process claims if they are deprived of their liberty
20 interest in the companionship and society of their child or parent through official conduct.”
21 *Lemire v. Cal. Dep’t. of Corr. & Rehab.*, 726 F.3d 1062, 1075 (9th Cir. 2013). “[T]he substantive
22 component of the Due Process Clause is violated by executive action only when it ‘can properly
23 be characterized as arbitrary, or conscience shocking, in a constitutional sense.’” *County of*
24 *Sacramento v. Lewis*, 523 U.S. 833, 847 (1998); *see also Porter*, 546 F.3d at 1137 (“only official
25 conduct that ‘shocks the conscience’ is cognizable as a due process violation.”). “[O]nly the most
26 egregious official conduct can be said to be arbitrary in a constitutional sense.” *Brittain v.*
27 *Hansen*, 451 F.3d 982, 991 (9th Cir. 2006) (quoting *Lewis*, 523 U.S. at 846). A prison official’s
28 deliberately indifferent conduct will generally ‘shock the conscience’” if “the prison official had

1 time to deliberate before acting or failing to act in a deliberately indifferent manner.” *Lemire*, 726
2 F.3d at 1075.

3 Defendants argue that Plaintiffs have not alleged facts sufficient to state a loss of familial
4 relations claim. (Doc. 5 at 17.) Specifically, Defendants contend that “Plaintiffs fail to describe
5 how Defendants were ‘deliberately indifferent to DECEDENT’s protection, safety, and serious
6 medical and mental health needs,’ violated decedent’s constitutional rights, or engaged in any
7 other conduct that shocks the conscience.” (Id. at 18, citing Compl. 12:3-5.)

8 Plaintiffs counter that they have stated a cause of action for deprivation of the right to
9 familial relationship with Decedent. Plaintiffs contend that Defendants were aware of facts that
10 Decedent had a mental disability and that he needed to be segregated from the general population
11 to avoid substantial risk to Decedent’s safety. (Doc. 9 at 20 [citing Compl. ¶¶ 22, 23, 49, 52].)
12 Plaintiffs further contend that the risk to Decedent was obvious, and Defendants knew that
13 placing Decedent in the yard with the general population posed a serious and obvious risk of
14 harm to Decedent. (*Id.*) Plaintiffs therefore assert that it is reasonable to infer that Defendants
15 “had time to deliberate before allowing Decedent to enter the yard with the general population.”
16 (*Id.*)

17 Contrary to Plaintiffs’ assertions, there are no factual allegations that Defendants—
18 particularly Defendants Allison, Macomber, and Pfeiffer—knew of Decedent’s specific mental
19 health needs, knew that Decedent would be entering the general population, knew of any
20 particular risk of harm to Decedent’s safety and protection posed by Decedent’s entering the yard
21 with the general population as a result of his mental disability, or even knew of, and had time to
22 deliberate, before Decedent entered the yard on October 14, 2023. Conclusory allegations that
23 Defendants were on notice and had time to deliberate before acting or failing to act are not
24 sufficient.

25 Plaintiffs’ claim for loss of familial relations against Defendants also appears to be based,
26 in part, on allegations that Defendants failed at the policy level, and that those failures caused the
27 deprivation of the constitutional rights of Plaintiff Mendoza Garcia and Decedent. However,
28 Plaintiffs do not identify specific conduct that “shocks the conscience,” and instead allege only

1 that the policies and training were “inadequate.” (*See, e.g.*, Compl. ¶ 52.)

2 For these reasons, the Court will recommend that Defendants’ motion to dismiss the third
3 cause of action for deprivation of the right to familial relationship with Decedent under the
4 Fourteenth Amendment be granted with leave to amend.

5 **E. Supervisory Liability**

6 Defendants contend that Plaintiffs fail to adequately allege supervisory claims based on a
7 failure to train, supervise, and discipline. Specifically, Defendants assert that Plaintiffs purport to
8 hold Defendants Pfeiffer, Allison, and Macomber liable “under a theory of supervisory liability
9 for failure to properly train, supervise, and discipline others,” but Plaintiffs’ allegations do not
10 differentiate between the three Defendants, and “do not state facts showing Defendants were
11 responsible for training correctional staff or that they were aware of the staffs’ training status.”
12 (Doc 5 at 18.) Further, Defendants contend that Plaintiffs’ allegations lack any indication that the
13 supervisory defendants had anything to do with the alleged training or policies, or how such
14 matters caused harm to Decedent. Defendants also contend that the complaint does not allege any
15 facts to suggest that Defendants Pfeiffer, Allison, and Macomber “were aware of training or
16 policy deficiencies, or that their respective subordinates were committing constitutional violations
17 which were caused due to training or policies.” (*Id.* at 19-20.)

18 Plaintiffs counter that Defendant Pfeiffer, as Warden of KVSP, was responsible for the
19 promulgation of the policies and procedures and allowance of the practices/customs committed
20 by employees of KVSP, and was responsible for the supervision, training, and hiring of persons at
21 KVSP. Plaintiffs assert that Defendant Pfeiffer failed to take corrective action, discipline, or
22 remove the command staff at KVSP who permitted inmates that should be segregated to gain
23 access to restricted areas of the yard reserved for the general population. Instead, Defendant
24 Pfeiffer allegedly ratified their actions and practices. Defendant Pfeiffer also allegedly failed to
25 ensure that Decedent was segregated from the general population. (Doc. 9 at 21.)

26 Similarly, Plaintiffs contend that Defendant Allison, the former Secretary of CDCR during
27 Decedent’s incarceration at KVSP, and Defendant Macomber, the present Secretary of CDCR,
28 were responsible for the promulgation of the policies and procedures and allowance of the

practices/customs committed by employees of CDCR, and were responsible for the supervision, training, and hiring of persons at CDCR. Further, Plaintiffs allege that Defendants Allison and Macomber knew that employees routinely permitted those that should be segregated to access areas designated for the general population, and Defendant Allison and Macomber failed to ensure that Decedent was segregated from the general population. Plaintiffs additionally allege that Defendants failed to properly train and supervise staff regarding policies, procedures and protection of inmates who suffer from a mental disability and instead ratified their actions. (*Id.*)

Supervisory Liability

Liability may not be imposed on supervisory personnel for the actions or omissions of their subordinates under the theory of respondeat superior. *Iqbal*, 556 U.S. at 676–77; *Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1020–21 (9th Cir. 2010); *Ewing v. City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).

Supervisors may be held liable only if they “participated in or directed the violations, or knew of the violations and failed to act to prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989); *accord Starr v. Baca*, 652 F.3d 1202, 1205–06 (9th Cir. 2011); *Corales v. Bennett*, 567 F.3d 554, 570 (9th Cir. 2009). “The requisite causal connection may be established when an official sets in motion a ‘series of acts by others which the actor knows or reasonably should know would cause others to inflict’ constitutional harms.” *Corales*, 567 F.3d at 570.

Supervisory liability may also exist without any personal participation if the official implemented “a policy so deficient that the policy itself is a repudiation of the constitutional rights and is the moving force of the constitutional violation.” *Redman v. County of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991) (citations and quotations marks omitted), abrogated on other grounds by *Farmer v. Brennan*, 511 U.S. 825 (1970). When a defendant holds a supervisory position, the causal link between such defendant and the claimed constitutional violation must be specifically alleged. *See Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement of supervisory personnel in civil rights violations are not sufficient. *See Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982).

1 Plaintiffs' allegations are not sufficient to state a claim for supervisory liability.
2 Plaintiffs' complaint does not include any factual allegations demonstrating or suggesting that
3 Defendants Pfeiffer, Allison, and Macomber participated in or directed the violations involving
4 Decedent, or knew of the alleged violations and failed to act to prevent them. Plaintiffs allege
5 that each of the supervising Defendants "either directed his or her subordinates in conduct that
6 violated DECEDENT's rights, or set in motion a series of acts and omissions by his or her
7 subordinates that the supervisor knew or reasonably should have known would deprive
8 DECEDENT of rights, or knew his or her subordinates were engaging in acts likely to deprive
9 DECEDENT of rights and failed to act to prevent his or her subordinate from engaging in such
10 conduct." (Compl. ¶ 63.) However, in order to state a cognizable claim, Plaintiffs may not
11 merely recite the elements of that claim. *See Twombly*, 550 U.S. at 555.

12 Although Plaintiffs generally allege that these defendants failed to ensure that Decedent,
13 who had previously been diagnosed as being bipolar with schizophrenic tendencies, was
14 segregated from the general population (Compl. ¶ 34), there are no specific factual allegations
15 demonstrating that any of these defendants knew of Decedent's diagnoses, knew that he was not
16 being segregated from the general population, or knew that he was at risk of harm. Additionally,
17 Plaintiffs' allegation that Defendants Pfeiffer, Allison, and Macomber knew that employees
18 routinely permitted those that should be segregated from general population to access areas
19 designated for the general population at KVSP is, at best, conclusory. (Compl. ¶ 28.) Plaintiffs
20 have not explained how Defendants would have such knowledge based on a single incident.

21 Additionally, Plaintiffs have not alleged that Defendants have promulgated or
22 implemented a specific policy "so deficient that the policy itself is a repudiation of the
23 constitutional rights and is the moving force of the constitutional violation." *Redman*, 942 F.2d at
24 1446. There are no factual allegations in the complaint suggesting that Defendants promulgated
25 or implemented a specific policy to permit inmates that should be segregated from the general
26 population to access areas designated for the general population at KVSP, nor are there factual
27 allegations identifying a specific policy alleged to be deficient related to the provision of
28 emergency care or adequate medical and mental health care. Plaintiffs' conclusory allegations,

1 without more, are not sufficient.

2 Failure to Train/Supervise

3 A “failure to train” or “failure to supervise” theory can be the basis for a supervisor's
4 liability under § 1983 in only limited circumstances, such as where the failure amounts to
5 deliberate indifference. *See City of Canton, Ohio v. Harris*, 489 U.S. 378, 387–90 (1989); *see*
6 *also Fuentes v. Montgomery*, No. 20-cv-1942-LAB (RBM), 2020 WL 7059530, at *3 (S.D. Cal.
7 Dec. 2, 2020) (“In order to state a § 1983 claim based on a failure to train, Plaintiff must allege
8 Warden Montgomery ‘was deliberately indifferent to the need to train subordinates, and the lack
9 of training actually caused the constitutional harm or deprivation of rights.’”) (citation omitted).
10 To establish a failure-to-train/supervise claim, a plaintiff must show that “‘in light of the duties
11 assigned to specific officers or employees, the need for more or different training [or supervision]
12 [was] obvious, and the inadequacy so likely to result in violations of constitutional rights, that the
13 policy-makers ... can reasonably be said to have been deliberately indifferent to the need.’”
14 *Clement v. Gomez*, 298 F.3d 898, 905 (9th Cir. 2002) (quoting *Canton*, 489 U.S. at 390). The
15 Ninth Circuit has applied the same failure to train standards to failure to supervise claims. *Davis*
16 *v. City of Ellensburg*, 869 F.2d 1230, 1235 (9th Cir. 1989) (“*Canton* dealt specifically with
17 inadequate training. We see no principled reason to apply a different standard to inadequate
18 supervision.”).

19 Ordinarily, a single constitutional violation by an untrained employee is insufficient to
20 demonstrate deliberate indifference for purposes of failure to train or supervise. *See Connick v.*
21 *Thompson*, 563 U.S. 51, 62 (2011); *see also Fuentes*, 2020 WL 7059530, at *3 (explaining that
22 isolated incidents are insufficient to allege that warden was put on “notice that a course of
23 training is deficient in a particular respect” and that “the absence of such a course will cause
24 violations of constitutional rights”); *Delgado v. Lizarraga*, No. 2:19-CV-1540 KJN P, 2019 WL
25 11729808, at *3 (E.D. Cal. Aug. 22, 2019) (finding complaint failed to state a cognizable claim
26 based upon a theory of failure to train or supervise where plaintiff’s “factual allegations identify
27 an isolated incident . . . , not a pattern of constitutional violations”).

28 Here, Plaintiffs’ complaint fails to state a cognizable claim based upon a theory of failure

1 to train/supervise. The complaint lacks factual allegations to plausibly suggest that Defendants
2 were on notice of specific training or policy deficiencies, or that their subordinates were
3 committing constitutional violations which were caused due to specific training or policy
4 deficiencies. “Without notice that a course of training is deficient in a particular respect,
5 decisionmakers can hardly be said to have deliberately chosen a training program that will cause
6 violations of constitutional rights.” *Connick*, 563 U.S. at 62.

7 Plaintiffs’ general allegations regarding training and policy deficiencies, and Defendants’
8 alleged failure to correct their policies, procedures and practices despite having notice of
9 significant and danger problems, are conclusory. Plaintiffs’ complaint does not allege a pattern of
10 similar constitutional violations by untrained or unsupervised employees sufficient to state a
11 claim for failure to train or supervise. Plaintiffs generally allege that before Decedent’s death,
12 Defendants “knew that there existed a great indifference to the safety and protection of the
13 inmates who were in the government’s custody within the California Department of Corrections
14 and Rehabilitation correctional facilities, including Kern Valley State Prison.” (Compl. ¶ 3.)
15 Plaintiffs also generally allege that Defendants were “put on notice of the great dangers which
16 existed . . . through the long history of deaths of those incarcerated; the inmate-on-inmate
17 violence which permeated Kern Valley State Prison; medical and mental health staff’s failures
18 amount to constitutional violations; and a general lackadaisical attitude towards Defendants’
19 obligations under the Eighth and Fourteenth Amendments.” (Compl. ¶ 4.) However, these
20 conclusory statements lack factual allegations identifying a pattern of constitutional violations.
21 Plaintiffs’ complaint includes factual allegations describing only a single, specific incident, which
22 is not sufficient to allege that Defendants were put on notice that a course of training (or
23 supervision) was deficient in a particular respect.

24 Failure to Discipline/Ratification

25 Plaintiffs also argue that they have stated a claim based, in part, on allegations that
26 Defendant Pfeiffer “failed to take corrective action, discipline, or remove the command staff at
27 KVSP who permitted those inmates that should be segregated to gain access to restricted areas of
28 yard reserved for the general population” and instead “ratified their actions and the practices.”

(ECF No. 9, at 21, citing Compl. ¶¶ 29, 65) Plaintiffs’ allegations appear to be premised on a theory of ratification. (See Compl. ¶ 65 (alleging Defendants’ ratification of conduct and failure to discipline culpable law enforcement officers and employees).) However, “[a] single decision by a supervisor not to reprimand a subordinate officer, without more, is not sufficient to establish the type of ratification that would lead to liability under § 1983.” *Jackson v. Aviles*, No. 18CV60-BAS (BLM), 2019 WL 2289393, at *8 (S.D. Cal. May 28, 2019), report and recommendation adopted, No. 18-CV-0060-BAS-BLM, 2019 WL 3369712 (S.D. Cal. July 26, 2019); see also *Johnson v. Warden*, No. 2:23-cv-0908-DC-JDP (P), 2025 WL 1400193, at *4 (E.D. Cal. May 14, 2025), report and recommendation adopted, No. 2:23-cv-0908-DC-JDP (PC), 2025 WL 2391487 (E.D. Cal. Aug. 18, 2025) (“To bring [ratification] claim, there must be “something more” than an isolated failure to discipline or the fact that a policymaker concluded an officer acted within applicable policies and procedures.”). Here, Plaintiffs allege only an isolated failure to discipline.

For the reasons stated, the Court will recommend that Defendants’ motion to dismiss the fourth cause of action for supervisory liability be granted with leave to amend.

F. Negligence – Wrongful Death

Defendants allege that Plaintiffs’ fifth cause of action for negligence-wrongful death fails to state a claim. Specifically, Defendants assert that Plaintiffs have not alleged each Defendants’ personal involvement, and as supervisors, Defendants Macomber, Allison, and Pfeiffer cannot be held liable for the acts of others under California Government Code § 820.8. (Doc. 5 at 20.)

“The elements of the cause of action for wrongful death are the tort (negligence or other wrongful act), the resulting death, and the damages, consisting of the *pecuniary* loss suffered by the *heirs*.” *Quiroz v. Seventh Ave. Ctr.*, 140 Cal. App. 4th 1256, 1263-64 (2006) (emphasis in original). The elements of the tort of negligence are “a legal duty to use due care, a breach of such legal duty, and the breach as the proximate or legal cause of the resulting injury.” *Vasilenko v. Grace Family Church*, 3 Cal. 5th 1077, 1083 (2017).

Section 820.8 states: “Except as otherwise provided by statute, a public employee is not liable for an injury caused by the act or omission of another person. Nothing in this section exonerates a public employee from liability for injury proximately caused by his own negligent or

1 wrongful act or omission.” Cal. Gov’t Code § 820.8. “In essence, the provision prevents public
2 officers from being held vicariously liable for the torts of their subordinates. *Graves v. California*
3 *Dep’t of Corr. & Rehab.*, No. EDCV 17-1086 JGB (SPx), 2019 WL 8168060, at *10 (C.D. Cal.
4 Nov. 14, 2019).

5 Here, Plaintiffs have apparently conceded Defendants Allison, Macomber, and Pfeiffer are
6 not vicariously liable for the actions of their subordinates. (Doc. 9 at 23 (“Defendants’ citation to
7 California Government Code § 820.8 is inapplicable because Plaintiffs do not assert liability
8 based on a theory of “respondeat superior,” as to Defendants PFEIFFER, ALLISON, or
9 MACOMBER.”).) Instead, Plaintiffs’ claims are premised on an assertion that “each Defendant
10 is liable for their own tortious acts, such as failing to supervise and/or train, and failing to enact
11 appropriate standards and policies.” (*Id.* at 23.)

12 “Section 820.8 has been held to be inapplicable to claims against a supervisor for his own
13 improper or negligent supervision and training.” *Solares v. Allison*, No. 1:20-cv-00323-NONE-
14 BAM, 2022 WL 102216, at * 4 (E.D. Cal. Jan. 11, 2022) (quotation and citation omitted;
15 collecting cases). Even if the Court were to accept that § 820.8 is inapplicable in the context of a
16 negligence-wrongful death claim, Plaintiffs have not adequately alleged claims against
17 Defendants premised on the failure to train or supervise, or failing to enact appropriate standards
18 and policies. Accordingly, the Court will recommend that this claim be dismissed with leave to
19 amend. However, based on the recommendation for dismissal, the Court finds it unnecessary to
20 address Defendants’ argument that punitive damages and attorneys’ fees are unavailable on the
21 wrongful-death claim. (Doc. 5 at 28.)

22 **G. ADA and Rehabilitation Act (“RA”)**

23 Defendants first contend that Plaintiffs’ seventh cause of action for violation of the ADA
24 and RA should be dismissed because it is impermissibly brought against Defendants Macomber,
25 Allison, and Pfeiffer in their individual capacities. (Doc. 5 at 21.)

26 Title II of the ADA provides, “no qualified individual with a disability shall, by reason of
27 such disability, be excluded from participation in or be denied the benefits of the services,
28 programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42

1 U.S.C. § 12132. The ADA defines “qualified individual with a disability” as “an individual with
2 a disability who, with or without reasonable modifications to rules, policies, or practices, the
3 removal of architectural, communication, or transportation barriers, or the provision of auxiliary
4 aids and services, meets the essential eligibility requirements for the receipt of services or the
5 participation in programs or activities provided by a public entity.” *Id.* § 12131(2).

6 While the RA has the additional requirement that the program or activity receive federal
7 funds, 29 U.S.C. § 794, “[t]here is no significant difference in analysis of the rights and
8 obligations created by the ADA and the Rehabilitation Act. Thus, courts have applied the same
9 analysis to claims brought under both statutes.” *Zukle v. Regents of the Univ. of California*, 166
10 F.3d 1041, 1045 n.11 (9th Cir. 1999) (citations omitted).

11 Plaintiffs cannot state a claim under the ADA or the RA against any defendant in their
12 individual capacities. *See Vinson v. Thomas*, 288 F.3d 1145, 1156 (9th Cir. 2002) (holding that
13 “a plaintiff cannot bring an action under 42 U.S.C. § 1983 against a State official in her individual
14 capacity to vindicate rights created by Title II of the ADA or section 504 of the Rehabilitation
15 Act”). To state a claim under the ADA or RA, a plaintiff must bring a lawsuit against a public
16 entity or against a person in their official capacity. *Powell v. Albrecht*, No. 2:23-CV-0520 DAD
17 AC P, 2025 WL 1735541, at *8 (E.D. Cal. June 23, 2025) (citing *Miranda B. v. Kitzhaber*, 328
18 F.3d 1181, 1187 (9th Cir. 2003); *see also U.S. v. Georgia*, 546 U.S. 151, 153 (2006). The Court
19 will therefore recommend that Defendants’ motion to dismiss Plaintiffs’ seventh cause of action
20 against Defendants Allison, Macomber, and Pfeiffer in their individual capacities be granted
21 without leave to amend.

22 Defendants additionally argue that the complaint fails to state a claim for violation of the
23 ADA or RA. (Doc. 5 at 21.) To that end, Defendants contend that Plaintiffs have not offered
24 factual allegations to support their claim that Decedent had a medical disability, nor have they
25 alleged how Decedent’s disabilities substantially limited one or more major life activity. (*Id.* at
26 22.) Defendants also contend that Plaintiffs have failed to allege what services, programs or
27 activities Decedent was excluded from participation in because of his disability, or that he was
28 subject to discrimination by CDCR officials. (*Id.*)

1 Plaintiffs counter that Decedent had bipolar disorder with schizophrenic tendencies and
2 that Defendants' failure to properly train and supervise staff on how to appropriately treat,
3 monitor, and interact with disabled persons violated his rights to equal treatment on the basis of
4 disability. Additionally, Plaintiffs assert that, because Decedent is unable to participate in this
5 litigation, discovery is needed to support their claims. (Doc. 9 at 24-25.)

6 In order to state a claim under Title II of the ADA, a plaintiff must allege four elements:
7 (1) he "is an individual with a disability;" (2) he "is otherwise qualified to participate in or receive
8 the benefit of some public entity's services, programs, or activities;" (3) he "was either excluded
9 from participation in or denied the benefits of the public entity's services, programs, or activities,
10 or was otherwise discriminated against by the public entity;" and (4) "such exclusion, denial of
11 benefits, or discrimination was by reason of [his] disability." *McGary v. City of Portland*, 386
12 F.3d 1259, 1265 (9th Cir. 2004) (alteration in original) (quoting *Thompson v. Davis*, 295 F.3d
13 890, 895 (9th Cir. 2002)).

14 To recover monetary damages under Title II of the ADA or the Rehabilitation Act, a
15 plaintiff must prove intentional discrimination on the part of the defendant. *Duvall v. County of*
16 *Kitsap*, 260 F.3d 1124, 1138 (9th Cir. 2001). Intentional discrimination can be shown by
17 deliberate indifference, which "requires both knowledge that a harm to a federally protected right
18 is substantially likely, and a failure to act upon that likelihood." *Id.* at 1139 (citations omitted).

19 Plaintiffs have alleged that Decedent was a qualified individual with a mental disability,
20 and he had bipolar disorder with schizophrenic tendencies. (Compl. ¶¶ 22, 90.) However,
21 Plaintiffs have not alleged facts demonstrating Decedent was excluded from participation in, or
22 denied the benefits of, any particular service or program offered by the prison because of his
23 mental illness, or that he was subjected to any type of discrimination *by reason of* his disability.
24 Conclusory allegations, without factual support, are not sufficient. (See Compl. ¶¶ 97-98.)

25 Further, Plaintiffs' allegations of inadequate or lack of medical care or mental health
26 treatment do not state a claim under the ADA or the RA. *Simmons*, 609 F.3d at 1022 (Inadequate
27 or negligent medical treatment alone does not constitute an unlawful failure to accommodate
28 under the ADA or the Rehabilitation Act); *Tandel v. County of Sacramento*, 2015 WL 1291377,

at *18 (E.D. Cal. Mar. 20, 2015) (“Inadequate treatment or lack of treatment for Plaintiff’s medical condition does not in itself suffice to create liability under [the ADA or the Rehabilitation Act].”). Accordingly, the Court will recommend that Defendants’ motion to dismiss Plaintiffs’ seventh cause of action for failure to state a claim be granted with leave to amend.

As the Court is recommending that this claim be dismissed, it is unnecessary to reach Defendants’ additional argument that Plaintiffs do not state a plausible claim for damages under the ADA or RA. (Doc. 5 at 23-24.) It also is unnecessary to address Defendants’ request to strike Plaintiffs’ demand for punitive damages as to these claims. (Doc. 5 at 28.) However, Plaintiffs are cautioned that punitive damages are not available for violations of the ADA or RA. *See Barnes v. Gorman*, 536 U.S. 181, 189 (2002); *Mark H. v. Lemahieu*, 513 F.3d 922, 930 (9th Cir. 2008).

H. Statutory Immunities

Defendants argue that they are statutorily immune from liability for Plaintiffs’ state law claims for negligence, violation of the Bane Act (Civil Code § 52.1), and alleged violation of California Government Code § 845.6. (Doc. 5 at 24.)

1. California Government Code § 845.2

Defendants argue that public employees cannot be held liable for the failure to provide sufficient equipment, personnel, or facilities within a penal institution, citing Government Code § 845.2. Section 845.2 provides that “neither a public entity nor a public employee is liable for a failure to provide a prison, jail or penal or correctional facility, or, if such facility is provided, for failure to provide sufficient equipment, personnel or facilities therein.” Cal. Gov’t Code § 845.2

Plaintiffs contend that this section is not applicable because they “do not allege that the harm to Decedent was the result of insufficient equipment or supplies.” (Doc. 9 at 27.)

Defendants reply that because of this confirmation by Plaintiffs, “it does not appear that Government Code section 845.2 has any application in this case.” (Doc. 10 at 14.)

Based on Defendants’ reply, the Court finds that § 845.2 is not applicable and does not bar Plaintiffs’ state law claims. The Court will therefore recommend Defendants’ motion to dismiss the state law claims on this basis be denied.

1 **2. California Government Code § 820.2**

2 Defendants argue they are immune from liability under California Government Code §
3 820.2, which states that “a public employee is not liable for an injury resulting from his act or
4 omission where the act or omission was the result of the exercise of the discretion vested in him,
5 whether or not such discretion be abused.” Cal. Gov’t Code § 820.2. Defendants bear the burden
6 of establishing that they are entitled to immunity for an actual policy decision made by an
7 employee who “consciously balanc[ed] risks and advantages” *AE ex rel. Hernandez v. County*
8 *of Tulare*, 666 F.3d 631, 639 (9th Cir. 2012) (citation omitted); *Steinle v. City & Cnty. of S.F.*,
9 919 F.3d 1154, 1161 (9th Cir. 2019) (explaining that to be entitled to § 820.2 immunity, there
10 must be a showing that the specific conduct giving rise to the suit involved the actual exercise of
11 discretion); *Est. of Debbs v. County of Sacramento*, No. 2:20-cv-01153-TLN-DB, 2023 WL
12 4108320, at *7 (E.D. Cal. June 21, 2023).

13 Defendants assert that this immunity applies to basic policy decisions or activities at the
14 “planning” level, rather than those at the “operational level,” citing *Taylor v. Buff*, 172 Cal. App.
15 3d 384, 390 (1985). (Doc. 5 at 25.) They further assert that Defendants Macomber, Allison, and
16 Pfeiffer engage in policy decisions or activities at the “planning” level, rather than at the
17 “operational” level. (*Id.* at 26.) However, Defendants admit that the allegations in the complaint
18 are phrased in a conclusory fashion without any detail as to how Defendants’ violated Decedent’s
19 rights. (*Id.*)

20 Given the conclusory nature of the complaint, Defendants’ generalized immunity
21 argument regarding policy decisions and activities is not sufficient. Further, the Court agrees
22 with Plaintiffs that Defendants’ immunity argument is premature at this stage in the pleadings.
23 (Doc. 9 at 27-28); see *M.M. v. San Juan Unified Sch. Dist.*, No. 2:19-cv-00398-TLN-EFB, 2020
24 WL 5702265, at *13 (E.D. Cal. Sept. 24, 2020) (agreeing that immunity argument premature at
25 motion to dismiss stage of pleadings); *Martinez v. County of Sonoma*, No. 15-cv-01953-JST,
26 2015 WL 5354071, at *10 (N.D. Cal. Sept. 14, 2015) (“[S]uch a claim of immunity can generally
27 not be resolved at a motion to dismiss.”).

28 Accordingly, the Court will recommend that Defendants’ motion to dismiss based on §

820.2 immunity be denied without prejudice.

I. Section 1983 Claims against CDCR

Defendants contend that Plaintiffs' section 1983 claims against CDCR should be dismissed because CDCR is not a "person" within the meaning of § 1983 and the injunctive relief exception to Eleventh Amendment immunity does not apply to a state or its agencies. (Doc. 5 at 26.) Plaintiffs counter that they should be permitted to advance their section 1983 claims against CDCR premised on government liability based on a policy or custom, failure to provide adequate training and supervision, and because of CDCR's implementation of certain policies that amounted to deliberate indifference to Decedent's safety and well-being. (Doc. 9 at 29-30.)

The Supreme Court has determined that state agencies are not "persons" under § 1983. *Howlett By & Through Howlett v. Rose*, 496 U.S. 356, 365 (1990). CDCR therefore cannot be held liable under § 1983. *See Est. of Sumner v. California Dep't of Corr. & Rehab.*, No. 2:22-cv-01638-JAM-DB, 2023 WL 3304233, at *2 (E.D. Cal. May 8, 2023) (noting Supreme Court has determined that state agencies are not "persons" under § 1983.)

In addition, the "Eleventh Amendment bars suits for money damages in federal court against a state, its agencies, and state officials acting in their official capacities." *Aholelei v. Dep't of Public Safety*, 488 F.3d 1144, 1147 (9th Cir. 2007). Indeed, the Eleventh Amendment prohibits federal courts from hearing a section 1983 lawsuit in which damages or injunctive relief is sought against a state, its agencies (such as CDCR) or individual prisons, absent "a waiver by the state or a valid congressional override. . . ." *Dittman v. California*, 191 F.3d 1020, 1025 (9th Cir. 1999). "The Eleventh Amendment bars suits which seek either damages or injunctive relief against a state, 'an arm of the state,' its instrumentalities, or its agencies." *See Fireman's Fund Ins. Co. v. City of Lodi, Cal.*, 302 F.3d 928, 957 n.28 (9th Cir. 2002) (internal quotation and citations omitted), cert. denied, 538 U.S. 961 (2003). "The State of California has not waived its Eleventh Amendment immunity with respect to claims brought under § 1983 in federal court. . . ." *Dittman*, 191 F.3d at 1025–26 (citing *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985)); *see also Brown v. Cal. Dep't. of Corrs.*, 554 F.3d 747, 752 (9th Cir. 2009) (finding California Department of Corrections and California Board of Prison Terms entitled to

1 Eleventh Amendment immunity). CDCR is a state agency entitled to Eleventh Amendment
2 immunity.

3 Based on the above, the Court will recommend Defendants' motion to dismiss Plaintiffs'
4 § 1983 claims against CDCR be granted without leave to amend.

5 **J. California Government Code § 845.6.**

6 Defendants argue that Plaintiffs' ninth cause of action for violation of California
7 Government Code § 845.6 fails to state a claim. (Doc. 5 at 27.)

8 Under California law, a public entity or its employee is not liable for injury caused by the
9 employee's failure to furnish or obtain medical care for a prisoner. Cal. Gov't Code § 845.6.
10 However, the public entity and its employee may be held liable if the employee is acting within
11 the scope of his employment and either knows or has reason to know that the prisoner needs
12 immediate medical care and fails to take reasonable action to summon such care. *Id.* "[S]ection
13 845.6 creates out of the general immunity a limited cause of action against a public entity for its
14 employees' failure to *summon* immediate medical care only The statute does not create
15 liability of the public entity for malpractice in furnishing or obtaining that medical care." *Vivanco*
16 *v. California Dep't of Corr. & Rehab.*, No. 1:17-cv-00434-BAM, 2019 WL 2764397, at *9 (E.D.
17 Cal. July 2, 2019), *aff'd*, 817 F. App'x 492 (9th Cir. 2020) (quoting *Castaneda v. Dep't of Corrs.*
18 *& Rehab.*, 212 Cal.App.4th 1051, 1070 (2013) (emphasis in original).

19 Plaintiffs' allegations generally concern the alleged failure to provide a certain level of
20 medical and psychiatric care, and do not concern a failure to summon immediate medical care.
21 Additionally, there are no factual allegations in the complaint demonstrating that Defendants
22 knew that Decedent had been stabbed on October 14, 2023, that Decedent needed immediate
23 medical care, and failed to take reasonable steps to summon medical care for Decedent.
24 Plaintiffs' complaint therefore fails to state a claim for violation of Government Code § 845.6.

25 Accordingly, the Court will recommend that Defendants' motion to dismiss Plaintiffs'
26 ninth cause of action for violation of Government Code § 845.6. action be granted.

27 ///

28 ///

1 **K. Defendant Allison**

2 Defendants contend that Plaintiffs' claims against Defendant Allison should be dismissed
3 because she retired at the end of December 2022, more than nine months before Decedent was
4 attacked on the yard, and she was replaced by Defendant Macomber.² (Doc. 5 at 29.)

5 Plaintiffs counter that she should not be dismissed because she allegedly was responsible
6 for the development and implementation of policies and procedures within the prison system and
7 allowed the continuation of the deficient practices that contributed to Decedent's death. (Doc. 9
8 at 30.) Plaintiffs also contend that Defendants' argument is premature, and they are "entitled to
9 conduct discovery to fully investigate Defendant ALLISON's involvement in the events leading
10 to the incident, including her role in the formulation and enforcement of policies that failed to
11 protect inmates like the Decedent." (*Id.* at 31.)

12 Plaintiffs provide no authority to support the proposition that Defendant Allison should
13 remain in this case despite retiring at the end of December 2022, more than nine months prior to
14 the incident. Nor do they explain how Defendant Allison could be responsible for the policies,
15 procedures, supervision, or training at KVSP or CDCR at the time of the incident. Because
16 Defendant Allison retired months before the incident that led to Decedent's death, the Court will
17 recommend that the claims against Defendant Allison be dismissed without leave to amend.

18 **V. Conclusion and Recommendation**

19 For the reasons stated, it is HEREBY RECOMMENDED that Defendants' motion to
20 dismiss Plaintiffs' complaint be GRANTED in part and DENIED in part as follows:

- 21 1. Defendants' motion to dismiss based on Plaintiff Mendoza Garcia's lack of standing to

22 ² Defendants request the Court take judicial notice of a December 12, 2022 article from CDCR's
23 website regarding the retirement of Secretary Allison and the appointment of Jeff Macomber as
24 the next CDCR Secretary, effective December 28, 2022. (Doc. 5-1, Ex. A.) Plaintiffs do not
25 object to the request. Accordingly, the Court will take judicial notice of Secretary Allison's
26 retirement at the end of December 2022. *See Vargas v. Wells Fargo Bank, N.A.*, No. C 12-02008
27 WHA, 2012 WL 2931220, at *7 (N.D. Cal. July 18, 2012) (holding that the Court may take
28 judicial notice of "government websites" as documents "not subject to reasonable dispute"); *see also Cota v. Liberty Mut. Ins.*, No. 1:18-cv-00133-DAD-JLT, 2018 WL 1453209, at *2 (E.D. Cal. Mar. 23, 2018) (same).

bring claims “on behalf of all wrongful death beneficiaries” be granted with leave to amend to remove any assertion or allegation that Plaintiff Mendoza Garcia brings this action “on behalf of all wrongful death beneficiaries of Isaac Joseph Duran,” and to clarify her standing as the sole wrongful death beneficiary.

2. Defendants’ motion to dismiss under Rule 12(b)(7) be denied as moot.
3. Defendants’ motion to dismiss the first and second causes action, to the extent they are brought under the Fourteenth Amendment, be granted without leave to amend the Fourteenth Amendment claims for failure to protect or failure to provide medical care.
4. Defendants’ motion to dismiss the sixth cause of action for violation of the Eighth Amendment be granted with leave to amend.
5. Defendants’ motion to dismiss the third cause of action for deprivation of the right to familial relationship with Decedent under the Fourteenth Amendment be granted with leave to amend.
6. Defendants’ motion to dismiss the fourth cause of action for supervisory liability be granted with leave to amend.
7. Defendants’ motion to dismiss the fifth cause of action for negligence-wrongful death be granted with leave to amend.
8. Defendants’ motion to dismiss the seventh cause of action for violation of the ADA and Rehabilitation Act against Defendants Allison, Macomber, and Pfeiffer in their individual capacities be granted without leave to amend.
9. Defendants’ motion to dismiss Plaintiffs’ seventh cause of action for violation of the ADA and Rehabilitation Act be granted with leave to amend.
10. Defendants’ motion to dismiss the state law claims based on California Government Code §§ 845.2 and 820.2 be denied.
11. Defendants’ motion to dismiss Plaintiffs’ § 1983 claims against CDCR be granted without leave to amend.
12. Defendants’ motion to dismiss Plaintiffs’ ninth cause of action for violation of California Government Code § 845.6 be granted with leave to amend.

1 13. Defendants' motion to dismiss Defendant Allison from this action be granted without
2 leave to amend.

3 These Findings and Recommendations will be submitted to the United States District
4 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
5 **fourteen (14) days** after being served with these Findings and Recommendations, the parties may
6 file written objections with the court. The document should be captioned "Objections to
7 Magistrate Judge's Findings and Recommendations." **Objections, if any, shall not exceed**
8 **fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page**
9 **number if already in the record before the Court. Any pages filed in excess of the 15-page**
10 **limit may not be considered.** The parties are advised that failure to file objections within the
11 specified time may result in the waiver of the "right to challenge the magistrate's factual
12 findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter*
13 *v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

14 IT IS SO ORDERED.

15 Dated: September 2, 2025

16 /s/ Barbara A. McAuliffe
17 UNITED STATES MAGISTRATE JUDGE
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